



October 18, 2001

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2001-4706

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153546.

The Longview Police Department (the "department") received a request for any and all information pertaining to a case involving an allegation of abuse of a nursing home resident, now deceased. You inform us that the department has released most of the responsive information to the requestor, but claim that certain information consisting of nurse's notes and hospital records are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The Medical Practice Act, chapter 159 of the Occupations Code, governs access to certain medical records. Section 159.002 of the Occupations Code provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the

information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

We find that the submitted information in its entirety, consisting of the history and physical exam notes as well as the nurses notes, are medical records which may only be released as provided by the MPA. Open Records Decision No. 598 (1991). As the patient is deceased, the medical records may be released only on the signed consent of the deceased's personal representative. Occ. Code §§ 159.005(a)(5). Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990).¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

¹ As we resolve your request under the MPA, we need not address your argument under section 552.108.

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 153546

Enc. Submitted documents

c: Mr. Tim G. Taylor
Route 9, Box 101-T
Jacksonville, Texas 75766
(w/o enclosures)